IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 725 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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AMRUTBHAI REVABHAI PATEL
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR MB DODIA for the Petitioner
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR JV JAPEE for Respondent No.2
None for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/02/2007

ORAL JUDGMENT

1. Present petition is filed being aggrieved by order dated 21.09.2006 passed by the learned Additional

Sessions Judge and First Fast Track Court, Himmatnagar below application Exh.30 in Sessions Case No.4 of 2006.

Application Exh.30 was filed by the petitioner – original stating that earlier, application Exh.29 was filed praying that in case of necessity, the complainant be allowed to file the evidence. The said application was granted.

In application Exh.30, it is stated that though the relevant documents were given for producing before the Court, the same were not produced and therefore, present application is required to be filed.

Permission was sought for to produce the evidence. This application is rejected by the order under challenge.

2. Heard Mr.M.B.Dodia, learned Advocate for the petitioner, Mr.H.L.Jani, learned Additional Public Prosecutor for respondent No.1 – State and Mr.J.V.Japee, learned Advocate for respondent No.2 – Jayantibhai Kalabhai Patel.

3. Learned Advocate Mr.Japee submitted that he has instructions to appear for both the respondents, i.e. respondent Nos.2 and 3. Respondent No.3 is, Kailashben, widow of Vishnubhai Amrutbhai Patel – the son of the

petitioner – original complainant.

When asked to ascertain about his appearance, learned Advocate Mr.Japee submitted that though he has instructions to appear for both the respondents, he has filed his Vakalatnama in this Criminal Revision Application on behalf of respondent No.2 only. He requested that therefore, let it be stated that he is appearing for respondent No.2 only.

The resultant effect is that, respondent No.3, though served, has chosen not to appear before the Court in this Criminal Revision Application. There is yet another Criminal Revision Application, i.e. 728 of 2006. There, learned Advocate Mr.Japee has filed his appearance for respondent No.3 – Kailashben. In that Criminal Revision Application, respondent No.2 – Jayantibhai Kalabhai Patel, though served, remains unrepresented.

This is something curious. Two respondents, against whom the case of the complainant is that respondent No.2 got married to respondent No.3 misrepresenting that he is not married, chose to engage a common Advocate and instructed him to file Vakalatnama on behalf of respondent No.2 in one case and on behalf of respondent No.3 in another.

4. Application Exh.30 was heard on 21.09.2006 and rejected by the learned Additional Sessions Judge by a very cryptic order. The only ground on which the application is rejected, is set out in paragraph No.5 of the order, wherein the learned Additional Sessions Judge has recorded that, 'on perusing the police papers of investigation, it cannot be said that the Investigating Officer was not having information of the aforesaid documentary evidence'. The Investigating Officer has deposed in his deposition at Exh.26 that, 'in his investigation, it was revealed that accused No.1 (respondent No.2 herein) by making an incorrect representation that he is not married, got married with respondent No.3 at Dhoraji and got the marriage registered'.

The learned Additional Sessions Judge has then proceeded to record that, 'thus, aforesaid fact is on record and as now the statement under Section 313 of Criminal Procedure Code is recorded (of the accused), at this stage, there is no reason for granting permission to produce any further evidence'.

5. The reasoning is unsustainable and speaks in volumes on the conduct of the investigation in the matter. This Court restrains itself from making any comment on the

conduct of the Investigating Officer, as the District Superintendent of Police is directed to look into the matter. But, in any case, the learned Additional Sessions Judge ought to have appreciated the contents of application Exh.30 and the desirability of granting the same. Having not done that, the learned Additional Sessions Judge has committed an error, which goes to the root of the matter and which, if allowed to stand, will result in miscarriage of justice.

6. In view of the aforesaid, order dated 21.09.2006 passed below application Exh.30 in Sessions Case No.4 of 2006 by the learned Additional Sessions Judge is hereby quashed and set aside. Application Exh.30 is allowed. The documentary evidence which is referred to therein be taken on record and the same be appreciated in accordance with law. Revision Application is allowed. Rule is made absolute. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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